

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #8	CCRB Case #: 201507246	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/22/2015 9:04 PM	Location of Incident: § 87(2)(b)	Precinct: 103	18 Mo. SOL 7/22/2016	EO SOL 7/22/2016	
Date/Time CV Reported Wed, 08/26/2015 11:51 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 08/26/2015 11:52 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Gukelberger	26809	948350	103 PCT
2. Officers			
3. An officer			
4. POM Kyle Glueckert	06823	949038	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Edwin Ferreira	04052	932638	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Gukelberger	Abuse: PO Daniel Gukelberger stopped § 87(2)(b)	
B.POM Kyle Glueckert	Abuse: PO Kyle Glueckert stopped § 87(2)(b)	
C.POM Daniel Gukelberger	Force: PO Daniel Gukelberger pointed his gun at § 87(2)(b) and § 87(2)(b)	
D.POM Daniel Gukelberger	Abuse: PO Daniel Gukelberger stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
E. Officers	Force: Officers pointed their guns at § 87(2)(b) and § 87(2)(b)	
F. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
G. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
H. Officers	Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)	
I.POM Daniel Gukelberger	Abuse: PO Daniel Gukelberger arrested § 87(2)(b) and § 87(2)(b)	

Case Summary

At approximately 8:40 p.m. on January 22, 2015, officers were investigating a burglary reported at § 87(2)(b) in Queens. As part of a canvass for suspects, officers identified as PO Deangelo Jones and PO Lance Walter of the 103rd Precinct, arrested § 87(2)(b), who was charged with § 87(2)(b). This incident was investigated by Inv. Sergio Guerra and Inv. Cassandra Fenkel as part of CCRB case #201503630, and closed by the Board on September 30, 2015. However, over seven months after the incident, the following complaint was filed by other civilians who were arrested separately as a result of the canvass for suspects.

At approximately 9:04 p.m. on January 22, 2015, § 87(2)(b) left his house, located on § 87(2)(b) in Queens. § 87(2)(b) was headed to meet his friends, § 87(2)(b) and § 87(2)(b) who were waiting in § 87(2)(b)'s car one block north. As he began walking in their direction, two officers identified through investigation as PO Daniel Gukelberger and PO Kyle Glueckert of the 103rd Precinct, pulled alongside him in an unmarked vehicle. As part of an investigation into a nearby burglary, PO Gukelberger exited and made a brief statement, prompting § 87(2)(b) to run away at a high rate of speed. PO Gukelberger and PO Glueckert immediately pursued § 87(2)(b) on foot (**Allegations A and B**) until they reached § 87(2)(b)'s vehicle. Seconds after § 87(2)(b) entered the back seat of the car, PO Gukelberger caught up and grabbed him in an attempt to remove him from the vehicle. PO Gukelberger pointed his gun at both § 87(2)(b) and § 87(2)(b) (**Allegation C**) while instructing them to stop (**Allegation D**). However, § 87(2)(b) drove away, forcing PO Gukelberger to release § 87(2)(b).

After PO Gukelberger called for backup over the radio, other officers pursued the civilians for several blocks and stopped their vehicle. Numerous unidentified officers approached the vehicle on foot, allegedly with guns drawn and pointed at all four civilians (**Allegation E**). The civilians subsequently exited their vehicle and were placed on the ground. Before being handcuffed, an unidentified officer allegedly stood over § 87(2)(b) with his gun pointed down at him (**subsumed within Allegation E**) while stating, "Don't fucking move or I'll shoot you" and "If there's something sharp in your pocket and it pokes me, I'm gonna stab you with it" (**Allegations F and G**). Immediately thereafter, multiple unidentified officers allegedly grabbed the back of § 87(2)(b)'s shirt and dragged him several feet forward before lifting him so that he was fully suspended and dropping him onto his stomach (**Allegation H**). Simultaneously, a separate set of unidentified officers allegedly dragged § 87(2)(b) across the ground, picked him up, and dropped him in the same way (**subsumed within Allegation H**). PO Gukelberger ultimately arrested all four civilians for obstruction of governmental administration (PL §195.05) and unlawful possession of marijuana (PL §221.05), while also charging § 87(2)(b) with reckless endangerment (PL §120.25) and reckless driving (VTL §1212) (**Allegation I**). It was determined that none of the four were involved in the burglary complaint that prompted the pursuit.

Mediation, Civil, and Criminal Histories

- Given § 87(2)(b)'s open court case and disinterest in mediation, this case was investigated.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[redacted]
[redacted]
- [redacted]
[redacted]
- [redacted]
[redacted]
[redacted]
[redacted]
- As of November 4, 2015, no notice of claim has been filed with the City of New York regarding this incident (see Board Review #5).

Civilian and Officer CCRB Histories

- PO Gukelberger has been a member of the NYPD for six years and has been a subject in three prior CCRB cases involving six FADO allegations, none of which have been substantiated. PO Gukelberger has been the subject of only one prior stop allegation, which was exonerated, § 87(2)(g) [redacted] (see Board Review #6).
- PO Glueckert has been a member of the NYPD for five years and this is the first CCRB complaint against him (see Board Review #26).
- This is the first CCRB complaint involving any of the four civilians (see Board Review #7).

Potential Issues

Between August 31, 2015 and October 6, 2015, five telephone calls were placed to the two numbers obtained for § 87(2)(b) [redacted] though there was never any option to leave voicemail. Additionally, two please call letters that have not been returned to the CCRB via the United States Postal Service were mailed to his address. A search of the New York City Department of Corrections inmate lookup webpage on November 20, 2015 revealed that § 87(2)(b) [redacted] was not incarcerated. As of the date of this report, § 87(2)(b) [redacted] has not provided a statement to the CCRB.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) [redacted] stated that as many as thirty officers were at the scene of the arrests and that six to seven specifically descended on him after he exited the vehicle. Of those, he was able to describe only the officer who allegedly pointed a gun at him while cursing and threatening to shoot and stab him, as noted above. § 87(2)(b) [redacted] stated that he was a 30-year-old plainclothes black male who stood 6'0" and weighed approximately 200 pounds. § 87(2)(b) [redacted] only knew that the officer who threatened § 87(2)(b) [redacted] was a black male, while § 87(2)(b) [redacted] did not observe the interaction. None of the civilians could describe any of the approximately four to five officers who allegedly used force against § 87(2)(b) [redacted] nor could they describe in detail any of the other officers present at the scene apart from being males.

Although both the foot pursuit of § 87(2)(b) [redacted] and the vehicle pursuit of the other civilians took place within the confines of the 103rd Precinct, the arrest of the actual perpetrator, § 87(2)(b) [redacted] took place a few blocks away directly on the border of the 102nd and 106th Precincts (see Board Review #8). As such, the officers who responded to this incident could have hailed from any of

those commands. The EVENT report from the incident (see Board Review #9) noted only that a SNEU sergeant as well as sectors A and F of the 102nd Precinct responded to scene of the vehicle stop. The SNEU sergeant for the 103rd Precinct, Sgt. Edwin Ferreira, acknowledged being present during his CCRB interview, but could not identify any officers except for his partners PO Thomas Lane, PO Samantha Gill, and PO Kevin Ryan, none of whom are black males. Sgt. Ferreira also noted that he and his officers arrived after other officers were already removing the civilians from the vehicle and handcuffing them. Meanwhile, the 102nd Precinct Roll Call (see Board Review #10) identified the officers assigned to Sectors A and F as PO Gary Stack, PO Patrick Walker, PO Jean Aujla, and PO Luke Henke, none of which are black males. The only plainclothes black male listed on either the 102nd or 103rd Precinct roll calls was PO Benjamin Aboagye, a § 87(2)(b) - old black male who stands 5'8" and weighs 180 pounds (see Board Review #11). However, despite being assigned to anticrime, the roll call noted that he was in Brooklyn traffic court that day. Given that this incident took place nine months prior to their interviews, neither PO Gukelberger nor PO Glueckert could recall any other officers present.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation A—Abuse of Authority: PO Daniel Gukelberger stopped § 87(2)(b)

Allegation B—Abuse of Authority: PO Kyle Glueckert stopped § 87(2)(b)

Allegation C—Force: PO Daniel Gukelberger pointed his gun at § 87(2)(b) **and**

§ 87(2)(b)

Allegation D—Abuse of Authority: PO Daniel Gukelberger stopped the car in which § 87(2)(b)

and § 87(2)(b) **were occupants.**

Allegation I—Abuse of Authority: PO Daniel Gukelberger arrested § 87(2)(b)

and § 87(2)(b)

The communications recording associated with this incident (see Board Reviews #12 and #13) confirmed that a reported description of the burglary suspect—a Hispanic male in a black puffy jacket or vest and a black hoodie and black pants—was transmitted over radio. Fifty-five seconds later, PO Walter notified that he was in pursuit of a Hispanic male with a black hoodie and black pants. Forty seconds after that, he notified that he had the perpetrator, § 87(2)(b) in custody. Over the next several minutes, there were multiple requests to confirm if there were any outstanding suspects, though PO Walter repeated three times that there were not. However, Sgt. Ferreira asked again to confirm that the burglary location was clear given that the original report mentioned the possibility of other suspects. In response, one of the investigating units stated that it was unknown. Approximately five minutes after PO Walter notified that one perpetrator had been apprehended, PO Gukelberger stated over the radio that he was in pursuit of another suspect, § 87(2)(b). No officer ever relayed any description associated with the pursuit of § 87(2)(b). As shown in his arrest photograph (see Board Review #14), at the time of his arrest, § 87(2)(b) was a light-skinned Hispanic male wearing a black jacket with a high collar. In contrast, § 87(2)(b) s

arrest photograph (see Board Review #15) shows that he was a § 87(2)(b) medium-skinned black male wearing a white, gray, and black camouflaged hoodie.

It is undisputed that in canvassing for suspects of a burglary, PO Gukelberger and PO Glueckert approached § 87(2)(b) as he was walking on the sidewalk, prompting him to immediately run away. It is also undisputed that both officers pursued § 87(2)(b) on foot and that PO Gukelberger caught up to him after he partially entered the vehicle in which § 87(2)(b) and § 87(2)(b) were all occupants. All parties agreed that PO Gukelberger instructed § 87(2)(b) not to drive while attempting to pull § 87(2)(b) from the vehicle, though § 87(2)(b) did not comply and instead drove away. PO Gukelberger ultimately arrested all four civilians for obstruction of governmental administration and possession of marijuana, which was found as a result of searches incident to the arrests.

§ 87(2)(b) (see Board Review #16) stated that he was carrying a duffle bag and a back pack that contained a small quantity of marijuana when the officers approached him. He also maintained that there were no street lights on that block at the time, so visibility was poor. § 87(2)(b) stated that he fled from PO Gukelberger and PO Glueckert because he believed them to be robbers given that their street clothing, lack of visible shields, and unmarked vehicle gave no indication they were officers. § 87(2)(b) maintained that upon approach, PO Gukelberger asked him what was happening and made an additional statement that he did not recall. Both § 87(2)(b) (see Board Review #17) and § 87(2)(b) (see Board Review #18) stated that they did not see any shield visibly displayed on PO Gukelberger and that he did not verbally identify himself as an officer when he was struggling with § 87(2)(b) in the back seat of the car. § 87(2)(b) and § 87(2)(b) were consistent that PO Gukelberger pointed his gun at both § 87(2)(b) and § 87(2)(b) in the car during the struggle.

Neither PO Gukelberger (see Board Review #19) nor PO Glueckert (see Board Review #20) recalled any specific details of the radio communications associated with the burglary. PO Gukelberger maintained that the street on which § 87(2)(b) was walking was well lit, though he did not recall if § 87(2)(b) matched any description previously provided. Conversely, PO Glueckert stated that § 87(2)(b) did match a previously provided description, though he did not recall specifically how he matched. Both officers stated that they observed § 87(2)(b) walking on the sidewalk, which PO Glueckert described as fast but not so fast as to constitute a jog. Neither officer recalled seeing any other suspicious behavior. While PO Gukelberger recalled § 87(2)(b) carrying a bag over his shoulder, PO Glueckert did not. Only when specifically asked about it did PO Gukelberger state that the bag added to his level of suspicion because it could have been used to transport stolen property. However, neither officer recalled seeing any suspicious bulges or outlines on § 87(2)(b)'s person at the time. Both officers also were consistent in that upon observing him, they did not definitively believe § 87(2)(b) to be the suspect and that their sole purpose in approaching was to ask him if he lived in the area and what he was doing there. PO Gukelberger added that he would have investigated anyone in that vicinity who displayed any suspicious activity. Both officers also agreed that § 87(2)(b)'s flight raised their suspicion.

Both PO Gukelberger and PO Glueckert stated that they identified themselves as police officers upon approaching § 87(2)(b). PO Gukelberger stated that he was in plainclothes while PO Glueckert stated that he was in uniform. PO Gukelberger did not recall if he ever drew or pointed

his gun at any civilian as he pursued § 87(2)(b) into the vehicle, and PO Glueckert, who acknowledged that he trailed far behind them, did not see his partner do so. PO Gukelberger cited only his desire to apprehend § 87(2)(b) as his reason for attempting to stop the vehicle. He also stated that § 87(2)(b) obstruction of governmental administration charge was for running away, § 87(2)(b)'s charge was for driving away with the suspect, and § 87(2)(b) and § 87(2)(b)'s charges were for holding onto § 87(2)(b) so as to prevent him from removing him from the car.

Police pursuit significantly impedes a person's freedom of movement, rendering it a stop. Therefore, such pursuit must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed. Flight can provide reasonable suspicion of a crime when coupled with founded suspicion that criminal activity is afoot, thereby justifying a common-law right of inquiry (Level II). However, flight alone in conjunction with circumstances justifying only a request for information (Level I), is insufficient to justify pursuit. People v. Holmes, 81 N.Y.2d 1056 (1993); People v. Madera, 189 A.D.2d 462 (1st Dept. 1993) (see Board Reviews #21 and #22). An officer is permitted to draw and point his firearm if he has a reasonable fear for his safety Police Department v. Gliner (Sept. 6, 2000) (see Board Review #23). A person is guilty of obstructing governmental administration in the second degree when he intentionally obstructs, impairs, or perverts the administration of law or other government function or prevents or attempts to prevent a public servant from performing an official function. New York State Penal Law §195.05 (see Board Review #24). Running from an officer does not constitute the crime of obstructing governmental administration. People v. Tillman, 184 Misc. 2d 20 (2000) (see Board Review #25).

§ 87(2)(g)
[REDACTED]

[REDACTED]

§ 87(2)(g)

Allegation E—Force: Officers pointed their guns at § 87(2)(b)
and § 87(2)(b)

The radio recording at [06:25] confirms that PO Gukelberger did not transmit any description of a suspect over the radio, but instead relayed the direction of flight in a tense voice that would be readily recognized as the result of his foot pursuit. Additionally, at [06:44] on the recording, there is unintelligible yelling as part of what sounds to be a struggle. The recording does not reveal how officers eventually identified or stopped the vehicle to which PO Gukelberger was referring. Regardless, all three civilians were consistent in that as § 87(2)(b) pulled the vehicle over, multiple unidentified officers approached on foot with their guns pointed at them. PO Gukelberger, PO Glueckert, and Sgt. Ferreira did not recall whether any officers had their guns drawn or pointed at the civilians as they exited the vehicle. § 87(2)(g)

An officer is permitted to draw and point his firearm if he has a reasonable fear for his safety Police Department v. Gliner (Sept. 6, 2000) (see Board Review #23).

§ 87(2)(g)

Allegation F—Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

Allegation G—Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation H—Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

Squad: __

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date